

July 6, 2006

Mr. Robert Sydney,
General Counsel
Division of Energy Resources
100 Cambridge St., Suite 1020
Boston, MA 02114

Re: **Comments on the Division of Energy Resources (DOER) Proposed RPS Regulations and Draft Biomass Eligibility Guidelines**

Dear Mr. Sydney:

The undersigned submit these comments on DOER's Proposed Renewable Portfolio Standard Regulations ("RPS") and Draft Biomass Eligibility Guidelines issued for comment on June 2, 2006 (the "Proposed Regulations").

The undersigned are renewable wind energy companies who are developing wind energy facilities to sell electricity into the New England and Massachusetts markets and who are concerned with the negative impacts of the Proposed Regulations on the value of Massachusetts Renewable Energy Credits (hereafter, "MA RECs") which constitute a material financial element of our projects.

We praise DOER for being responsive to the suggestions of the wind industry and substantially revising and improving the draft RPS regulations. However the undersigned do have some further concerns with the Proposed Regulations.

The Massachusetts RPS statute¹ requires *increasing* the proportion of electricity generation serving Massachusetts customers from *new* (post 1997) renewable energy generating sources or increased production beyond the historic level of generation from pre-1998 resources. The Proposed Regulations could allow certain pre-1998 biomass facilities to qualify their *entire* electrical generation output for MA RECs, which is inconsistent with the mandates of the RPS statute, and would also allow non-renewable fuels such as construction and demolition waste to qualify as biomass fuels, which is not permitted by the RPS statute.

The result of implementing the Proposed Regulations will be to improperly allow many plants to qualify their electrical generation for MA RECs, which will place substantial downward pressure on MA REC prices and will likely decrease or terminate investment and construction of a number of wind and renewable energy plants in New England and Massachusetts.

¹ MGL c.25A, s. 11F

1. The Proposed Regulations Improperly Permit Certain Pre-1998 Biomass Plants to Qualify Their Entire Electrical Generation for MA RECs.

The RPS statute, as supported by its legislative history,² requires that the RPS qualify as a “new renewable” energy generation plant only those plants which began commercial operation after December 31, 1997 or represent an increase in generation after December 31, 1997. The RPS Statute does allow DOER to consider “previously operational” biomass plants retrofitted with advanced technology to be considered as a *renewable* energy source, but it does not declare such plants to be a *new* renewable energy generating source. Retrofitting a pre-1998 biomass plant and requiring it to meet emission or advanced technology guidelines simply does not make the plant new.³

Nevertheless, DOER’s Proposed Regulations would allow exceptions and exclusions which could permit certain pre-1998 biomass plants to qualify as a “New Renewable Generation Unit”:

- The Proposed Regulations would qualify as a New Renewable Generation Unit “All or a portion” of the electrical output of any “Retrofitted Biomass Generation Unit”⁴ without any further definition or criteria except that it must comply with Section 14.05 of the Proposed Regulations.
- The Proposed Regulations would allow any “retrofitted”⁵ Generation Unit to qualify as a new renewable plant as long as it uses “advanced biomass power generation technology” as set forth in DOER’s draft “Guideline on the RPS Eligibility of Biomass Generation Units”⁶ (the “Biomass Guidelines.”) However, the advanced technology portion of the Biomass Guideline is vague and leaves what is advanced biomass technology to the discretion of DOER. There is no express restriction on pre-1998 generation in this section of the Proposed Regulations⁷ or in Section two of the Biomass Guideline with respect to “Advanced Biomass Power Generation Technology Criteria.”
- The Proposed Regulations would completely exempt from the “Vintage Waiver” requirements and allow pre-1998 generation to qualify for the MA RPS biomass generation (i) plants which previously generated electricity

² See letter to DOER from the Joint Energy Committee of the Massachusetts Legislature, March 6, 2002.

³ See MGL c. 25A s.11F(b), next to last sentence.

⁴ See Proposed Regulations at 14.05(2).

⁵ See Proposed Regulations at 14.05(1)(a)(6)(b).

⁶ See the “Guideline on the RPS Eligibility of Biomass Generation Unit” appended to the Proposed Regulations.

⁷ Proposed Regulations at 14.05(1)(a)(6)(b).

outside New England and were moved into New England after December 31, 1997;⁸ (ii) plants which did not burn Eligible Renewable Fuel before January 1, 1998;⁹ or (iii) a plant which replaces a generation plant on the same site prior to January 1, 1998.¹⁰ These exceptions could allow all of the pre-1998 generation from these plants to qualify for MA RECs. The only requirement is that the plants comply with the vague Biomass Guideline with respect to heat rates and emissions, which does not require that the plants be new (post 1997).

Since the MA RPS statute permits only post 1997 biomass plants and incremental generation from pre-1998 plants to qualify for the RPS, any portion of these regulations, together with the Biomass guidelines, that would provide an exemption or loop-hole to qualify the generation of a pre-1998 plant is unauthorized by the statute and this portion of the regulation would be illegal.

See the suggestions on Page 4, below, to rectify these issues.

2. The Proposed Regulations Inappropriately Permit the burning of C&D Wood.

The Proposed Regulations would permit any biomass plant to burn construction and demolition wood ("C&D") as an "Eligible Biomass Fuel."¹¹ Permitting biomass plants to burn unlimited amounts of waste wood (particularly the demolition portion of the waste stream) contaminated with lead paint, creosote, pesticides and other chemicals would permit them to become, in effect, waste disposal plants. Unrestricted combustion of C&D wood is not renewable energy nor the type of clean, non-polluting fuel source conversion which the RPS statute intended to incentivize.

Moreover, combustion of C&D wood generates emissions of hazardous air pollutants and air toxics as well as ash which contains a substantial amount of hazardous metals which creates a significant hazardous waste disposal problem.

The definition of C&D Wood should be revised as discussed on page 5, Section B, below.

3. The Proposed Regulations are Contrary to Governor Romney's "New" Renewable Policy.

Governor Romney on June 24, 2006, in his recent actions on the Economic Stimulus Bill refused to sign into law and returned to the legislature the sections

⁸ See Proposed Regulations at 14.05(2)(c)(1).

⁹ See Proposed Regulations at 14.05(2)(c)(2).

¹⁰ See Proposed Regulations at 14.05(2)(c)(3).

¹¹ See Proposed Regulations at 14.02.

of the bill which would permit pre-1998 hydroelectric plants to qualify for the Massachusetts RPS. The reasoning was that allowing pre-1998 plants to qualify would provide an unnecessary windfall to existing units and would flood the market with RECs generated by old plants both in Massachusetts and throughout New England, causing REC prices to fall too low to encourage any new renewable energy development, “defeating the very purpose of the law.” Governor Romney would approve for RPS qualification only new (post 2005) hydroelectric plants.¹²

The Proposed Regulations are thus inconsistent with the policy on new renewables expressed by the Governor.

4. The Proposed regulations Will Chill or Decrease Investment in New Renewable Energy Facilities in the Region.

Recently, the Connecticut DPUC permitted biomass plants retrofitted with modest emission controls and other retrofits to qualify as Class 1, permitting so many preexisting biomass energy plants to qualify for CT RECs that the CT REC market prices plunged from \$35.50 to a low of 3.00 per MWh.¹³ The Proposed Regulations could similarly allow so many pre-1998 biomass plants both inside and outside New England to qualify for MA RECS that the price of Massachusetts RECs will also drop precipitously. This is not a theoretical possibility, and it could quite easily occur in the Massachusetts REC market.

Consequently, the ability of truly new renewable energy plants to attract capital and financing will be impeded, and new renewable energy plants will not be developed or built. This result is contrary to the purpose and intent of the RPS program and the RPS statute.

5. Suggestions to Rectify the Deficiencies in the Proposed Regulations.

The undersigned suggest that the proposed Regulations can be redrafted to comply with the requirements of the RPS statute that only new renewable generation plants qualify for MA RECs by adopting the following changes:

A. Revise the eligibility requirements in Section 14.05 to permit a pre-1998 biomass plant to qualify its generation for the MA RPS as a “Retrofitted Biomass Generation Unit”¹⁴ only if:

- (i) The pre-1998 biomass generation unit replaces its old combustor with a new unit; and

¹² See Governor Romney’s letter to the Massachusetts House and Senate, dated June 24, 2006, Attachment D.

¹³ See www.evomarkets.com and *SNL Interactive*, September 16, 2005.

¹⁴ See Proposed Regulations at 14.05(2).

- (ii) Obtains a new air permit meeting “Best Available Control Technology;” and
- (iii) The repowered biomass generation unit must demonstrate that 80% of the resulting tax basis of the entire biomass generation unit’s plant and equipment is derived from capital expenditures made after December 31, 1997; and
- (iv) The pre-1998 biomass generation unit must increase its efficiency and decrease its emissions in accordance with the Biomass Guideline.

Similar requirements to (i), (ii) and (iii) above were recently adopted by the Rhode Island P.U.C. in its Renewable Energy Standard Regulations.¹⁵

B. The definition of “Eligible Biomass Fuel” should include “clean wood” but exclude the following:

“Wood sources containing resins, glues, laminates, paints, preservatives or other treatments that would combust off-gas, or mixed with any other material that would burn, melt or create other residue aside from wood ash, will not be approved as clean wood.”¹⁶

Clean wood would have to demonstrate proof of compliance with strict sorting requirements.

C. Finally, the Biomass Guidelines are too vague and, in essence, leave eligibility decisions to the unfettered discretion of DOER to qualify any technology it determines to be “advanced.” See, for example, the reference to well established stoker technology on page 16 of the Biomass Guideline as being eligible to be an advanced biomass energy technology. Also, see page 13 of the Biomass Guideline where it states that the net heat rate figures are merely “targets toward which to strive, **not** threshold values that must be met.”

Thus, since the Biomass Guidelines are “targets” they do not impose binding standards for what can qualify for the MA RPS as they can be waived or altered in the discretion of DOER. The renewable energy industry and project financing sources need more certainty in the regulatory requirements as to what type of advanced biomass energy technology can qualify for the RPS.

Moreover, DOER’s administration of the RPS regulations have in the past allowed too many pre-1998 biomass plants to qualify their generation for the

¹⁵ See Section 3.28 of “Rules and Regulations Governing the Implementation of a Renewable Energy Standard,” adopted by the R.I.P.U.C., effective on January 1, 2006.

¹⁶ See Nt. 15, at Section 3.6.

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RPS. The undersigned suggest that a much more precisely written Biomass Guideline designating what DOER now determines to be advanced biomass generation technology would provide the public and the renewable energy industry an opportunity to comment on DOER's policy determinations and logic and would provide comfort that DOER's eligibility determinations will be based on well defined and transparent guidelines. If there are subsequent changes to biomass technology that DOER subsequently wishes to include, DOER could issue new draft guidelines for public comment.

6. Conclusion:

New means new. Pre-1998 plants that have been retrofitted to meet heat rate and vague advanced technology guidelines are not new plants. To the extent the Proposed Regulations together with Biomass Guidelines permit these plants to qualify for the MA RPS, they are inconsistent with the MA RPS statute as well as with Governor Romney's recent action actions prohibiting pre-1998 hydro plants from qualifying for the Massachusetts RPS.

The definition of C&D Wood as an Eligible Biomass Fuel should be revised as discussed above.

If the Proposed Regulations and Biomass Guidelines are not revised, DOER's action may lead to a substantial devaluation of the MA REC market prices, as occurred in the CT REC market, and have the effect of decreasing investment in new renewable energy sources, a result not in accordance with the MA RPS statute or DOER's policy goals.

We urge DOER to redraft its Proposed Regulations in accordance with these comments.

Please contact me or any signatory if you have any questions.

Sincerely,

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July 6, 2006

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